

GAHC010200312017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

CRIMINAL PETITION No. 678 OF 2017

Sri Dimbeswar Roy

Son of Late Amrit Ch. Roy,
Resident of Dakshin Haibargaon,
New Colony, P.O. Haibargaon,
District- Nagaon, Assam.

----- Petitioner

– *VERSUS* –

The State of Assam

----- Opposite Party

BEFORE
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

Advocate for the Petitioner	: Mr. K Agarwal, Sr. Advocate
Advocate for Opposite Party	: Mr. BB Gogoi, Additional Public Prosecutor
Date of hearing & Judgment	: <i>17th February, 2022.</i>

JUDGMENT & ORDER (ORAL)

Heard Mr. K Agarwal, learned senior counsel for the petitioner. And Mr. BB Gogoi, learned Additional Public Prosecutor appearing for the State respondent.

[2] This is an application under Section 482 of the Cr.PC seeking quashment of

(a) the order, dated 01.04.2017, passed by the learned Chief Judicial Magistrate, Goalpara, in CR Case No. 109/2017, taking cognizance of offences under Sections 166/325/338 of the IPC and the entire proceeding of the aforesaid CR Case.

(b) the Enquiry Report, dated 30.03.2017, in Misc. Enquiry No. 1/2017 of the Principal Magistrate, Juvenile Justice Board, Goalpara.

(c) the order, dated 17.02.2017, passed by the learned District & Sessions Judge, Goalpara, directing enquiry by the Principal Magistrate, and

(d) the order contained in the letter dated 31.03.2017 of the District & Sessions Judge, Goalpara to the learned Chief Judicial Magistrate, Goalpara.

[3] The fact of the case, as appears from the materials on record, is that one Prejonitha Sangma lodged an ejahar on 09.02.2017 before the Officer-In-Charge, Goalpara Sadar Police Station, inter alia, alleging that on 08.02.2017 at about 10:00 pm, her minor daughter Miss Tarimchi Sangma was kidnapped from the road in front of her house by the accused person mentioned at Sl. No. 1 in the ejahar with the help of other unknown accused and took her to some unknown place by inducing her and showing false promises. After several search and enquiry the girl could not be traced out till now and that the accused No. 1, as mentioned in the ejahar, called from his mobile SIM No. 7002701572 to the

mobile No. of the informant. In the said ejahar a prayer was made to take necessary action by investigating the incident and the name of accused No. 1 was mentioned as Rahul Ali, son of unknown.

[4] On the basis of the aforesaid ejahar, Goalpara P.S. Case No. 46/2017 under Sections 366(A)/34 of the IPC read with Section 8 of the POCSO Act was registered. On the basis of the aforesaid ejahar dated 09.02.2017, the Police arrested Md. Jannadur Rahman, son of Mizanur Rahman and Md. Sayed Manzur Hassan, son of Abdul Mazid on 09.02.2017 and produced them before the learned Chief Judicial Magistrate, Goalpara on 10.02.2017 along with a forwarding report. In the said forwarding report dated 10.02.2017 a prayer was made to remand the accused person to jail hajat for a period of 14 days enabling to complete the investigation. Both the accused persons were medically examined after their arrest on 09.02.2017 itself.

[5] The materials on record reveals that the parents of accused Jannadur Rahman filed application before the court of the Sessions Judge, Goalpara claiming juvenility of their son and on 14.02.2017 their son Jannadur Rahman was declared juvenile by the learned court of Session Judge, Goalpara and order was passed for sending him to Observation Home at Boko. On 15.02.2017, the parents of Jannadur Rahman filed petition before the Juvenile Justice Board, Goalpara for custody of their son and on that day itself, order was passed for providing Jimma and accordingly, on 16.02.2017 the parents received their son from Observation Home, Bamunigaon, Boko.

[6] The materials on record also reveals that while Jannadur Rahman was in Observation Home, Boko, the Member Secretary, Assam State Legal Services Authority visited the Observation Home on 16.02.2017 and came across said Jannadur Rahman, who alleged that the concerned police personnel

of Goalpara Police Station (Sadar) as well as the O.C. Sri Dimbeswar Roy had severally assaulted him physically, resulting in injuries, including fracture, before handing over to the Observation Home Authorities. The materials on record further reveals that the Member Secretary, Assam State Legal Services Authority vide letter No. ASLA 176/2011/Pt-1/745 dated 17.02.2017 addressed to the District & Sessions Judge-cum-Chairman District Legal Services Authority, Goalpara, Assam requested to verify the matter and take necessary steps accordingly. In the aforesaid letter, the Member Secretary also requested to intimate the Assam State Legal Services Authority about the steps taken in this regard.

[7] The materials on record further reveals that on receipt of the aforesaid letter dated 17.02.2017, the learned District & Sessions Judge-cum-Chairman District Legal Services Authority, Goalpara, Assam on 17.02.2017 entrusted the Principal Magistrate, Juvenile Justice Board, Goalpara to enquire the matter and submit a report.

[8] The materials on record also reveals that the learned Principal Magistrate, Juvenile Justice Board, Goalpara conducted an enquiry being Misc. Enquiry No. 1/2017. The materials on record further reveal that during the enquiry the Principal Magistrate, Juvenile Justice Board, Goalpara called for the record of Goalpara P.S. Case No. 46/2017 under Sections 366(A)/34 of the IPC read with Section 8 of the POCSO Act and recorded the statements of (1) Jannadur Rahman (victim-Juvenile), (2) Jayeda Khatun (mother of Jannadur), (3) Dr. Seema Hazarika, Senior Medical and Health Officer, Civil Hospital, Goalpara, (4) Dr. Noorjahan Ahmed, Medical and Health Officer, District Jail, Goalpara, (5) Mizanur Rahman (father of Jannadur) and (6) Dr. Bedabrata Das, Medical and Health Officer, Bamunigaon Model Hospital. During the aforesaid

enquiry medical examination reports prescriptions, X-Ray report and other documents including medical report dated 09.02.2017 were also examined and exhibited as Exhibits 1 to 8 and also marked as Annexures- 1 to 3.

[9] The learned Principal Magistrate, Juvenile Justice Board, Goalpara on conclusion of the enquiry, submitted a report on 30.03.2017. The aforesaid report dated 30.03.2017 was forwarded to the learned District & Sessions Judge, Goalpara along with the documents enclosed along with the report.

[10] The materials on record also indicate that the learned District & Sessions Judge, Goalpara vide his letter No. DJG/252-53 dated 31.03.2017 forwarded the enquiry report dated 30.03.2017 to the learned Chief Judicial Magistrate, Goalpara for necessary action for taking cognizance under Section 190 of the Cr.PC.

[11] The learned Chief Judicial Magistrate, Goalpara, upon perusal of the enquiry report along with the materials on record, found prima facie, commission of offences under Sections 166/325/338 of the IPC. The learned Chief Judicial Magistrate, Goalpara vide order dated 01.04.2017 took cognizance of the matter and directed to register a case, on the basis of which CR Case No. 109/2017 under Sections 166/325/338 of the IPC was registered against the petitioner. The aforesaid record of CR Case No. 109/2017 was transferred to the file of the learned Munsiff Magistrate No. 1, Goalpara for disposal. The learned Munsiff Magistrate No. 1 (herein after referred to as the learned trial court) vide order, dated 01.04.2017 issued summon to the accused petitioner fixing 02.05.2017 for appearance.

[12] Thereafter on appearance of the petitioner before the learned court below, the matter was fixed for consideration of charge.

[13] The petitioner has sought for quashment of the entire proceeding including the enquiry report based on which the proceeding was initiated on the ground that the petitioner while working as Officer-In-Charge of Goalpara Sadar Police Station, received the FIR dated 09.02.2017, referred to above, and entrusted investigation on the said FIR to another Police Officer, i.e., S.I. of Police Baresh Baruah the said case being numbered as Goalpara P.S. case No. 46/2017 registered under Sections 366(A)/34 of the IPC. The Investigating Police Officer, aforesaid, apprehended one Jannadur Rahman whose name has been written as Rahul Ali in the FIR and one Syed Manjur Hassan along with the victim girl and brought to the Police Station. On 09.02.2017 itself, said Jannadur Rahman and Syed Manjur Hassan were produced before the Civil Hospital, Goalpara for medical examination. The Doctor on duty examined Jannadur Rahman and found him physically fit. The Doctor who examined Jannadur Rahman on 09.02.2017 did not find any injury and as such no injury was recorded to have been found in his person in the medical report of injury. On 10.02.2017, the aforesaid two accused persons were produced before the learned Chief Judicial Magistrate, Goalpara with a prayer to remand them to jail *hajot*. The aforesaid Juvenile-in-conflict with law, i.e. Jannadur Rahman was also examined by Doctor Seema Hazarika, Senior Medical & Health Officer, Goalpara on 10.02.2017 before the Juvenile Justice Board before which he was produced. On examination of the aforesaid Juvenile-in-conflict with law, Jannadur Rahman, no injury was found on his person. The parents of the said Juvenile-in-conflict with law Jannadur Rahman along with few other came to the Police Station and requested them not to register any case against him in view of the settlement that has taken place between the parties which was, however, refused by the Police, the offences being cognizable and as the case has already

been registered. Thereafter, they made the allegation of torture upon Jannadur Rahman aforesaid after refusal of the Police to oblige the parents of the petitioners on their above request.

[14] On hearing the arguments made by the respective learned counsel for the parties and on perusal of the materials on record, it has come out clearly that the alleged victim in the instant case was in jail custody from 10.02.2017 to 15.02.2017. What transpires from the entire materials is that on 9th and 10th of February, 2017, Juvenile-in-conflict with law, Jannadur Rahman, was examined by competent Doctor of Goalpara Civil Hospital and was found fit and there was no injury on his person at that point of time. However, the allegation pertains to a period when the petitioner was not in Police custody, rather, in jail custody. There is no instance in the record, even remotely, to show that the petitioner had any chance to inflict torture upon the aforesaid victim Jannadur Rahman. That apart, the enquiry report, involved in this case, is also found to have recorded that the victim Jannadur Rahman himself did not make any allegation before 15.02.2017 of any injury being inflicted upon him by the present petitioner.

[15] The learned senior counsel for the petitioner has also made a submission in the line of the findings recorded by this Court, as above, in para 18 of the application. This Court has also taken note of the fact that on 14.02.2017, an application was made before the learned jurisdictional Sessions Judge seeking to declare the aforesaid Jannadur Rahman as a Juvenile-in-conflict with law. In that application also, there was no whisper made to the effect that Jannadur Rahman had any injury on his person or any injury was inflicted to him during police custody. Therefore, it appears from the materials available on record that there is no sufficient material to proceed against the

petitioner as an accused in the aforesaid proceeding.

[16] On the other hand, Mr. Agarwal, learned senior counsel for the petitioner, has also submitted referring to the decision of the Hon'ble Supreme Court in the case of ***D. Devaraja Vs. Owais Sabeer Hussain***, reported in ***(2020) 7 SCC 695*** that in the instant case sanction for prosecution was required which was not obtained before taking cognizance and cognizance was taken without there being prosecution sanction. He has also submitted that the petitioner was an Inspector of Police at the relevant point of time and was holding the position of Officer-In-Charge of Goalpara Police Station. The step he had taken in connection with the case out of which the allegation in the instant proceeding has arisen was done in accordance with law and in discharge of his official duty.

[17] Mr. Gogoi, learned Additional Public Prosecutor, has submitted that assaulting a person accused of an offence is not in discharge of official duty of a Police Officer. However, during the course of discussion above, it is found that there was no torture or injury inflicted upon the aforesaid Jannadur Rahman by the petitioner. Therefore, prosecution sanction was required.

[18] That apart, referring to Annexure-12 at page 63 of the petition, the learned senior counsel for the petitioner has submitted that there was a direction to the learned Chief Judicial Magistrate, Goalpara to take cognizance under Section 190 of the Cr.PC on the basis of the enquiry report which is, however, completely illegal in the sense that cognizance was supposed to be taken by the concerned learned Magistrate after application of mind. That being so, taking cognizance of the offences in the instant case has no approval of the law.

[19] In view of the discussions made above and the findings recorded

therein, particularly on facts, this Court is inclined to quash the proceeding aforesaid as well as the enquiry report, referred to above, being abuse of the process of the Court. Therefore, invoking the provisions of Section 482 of the Cr.PC, the aforesaid proceeding including the orders passed therein as well as the enquiry report specifically mentioned above are quashed.

[20] The petition stands disposed of accordingly.

JUDGE

Comparing Assistant